

**TEMPORARY SERVICES TERM CONTRACT  
SPB05-1007P-E**

**1. PARTIES**

THIS CONTRACT, is entered into by and between the State of Montana, Department of Administration, State Procurement Bureau, (hereinafter referred to as "the State"), whose address and phone number are Room 165 Mitchell Building, 125 N Roberts, PO Box 200135, Helena MT 59620-0135, (406) 444-2575 and **Westaff of Helena, Inc.**, (hereinafter referred to as the "Contractor"), whose nine digit Federal ID Number, address and phone number are 680095781, 210 E Lyndale Ave., Suite A, Helena MT 59601, and (406) 443-7169.

**THE PARTIES AGREE AS FOLLOWS:**

**2. EFFECTIVE DATE, DURATION, AND RENEWAL**

**2.1 Contract Term.** This contract shall take effect on November 1, 2010, and terminate on October 31, 2011, unless terminated earlier in accordance with the terms of this contract. (Mont. Code Ann. § 18-4-313.)

**3. COOPERATIVE PURCHASING**

Under Montana law, public procurement units, as defined in section 18-4-401, MCA, have the option of cooperatively purchasing with the State of Montana. Public procurement units are defined as local or state public procurement units of this or any other state, including an agency of the United States, or a tribal procurement unit. Unless the bidder/offeror objects, in writing, to the State Procurement Bureau prior to the award of this contract, the prices, terms, and conditions of this contract will be offered to these public procurement units.

**4. NON-EXCLUSIVE CONTRACT**

The intent of this contract is to provide state agencies with an expedited means of procuring supplies and/or services. This contract is for the convenience of state agencies and is considered by the State Procurement Bureau to be a "Non-exclusive" use contract. Therefore, agencies may obtain this product/service from sources other than the contract holder(s) as long as they comply with Title 18, MCA, and their delegation agreement. The State Procurement Bureau does not guarantee any usage.

**5. SERVICES AND/OR SUPPLIES**

Contractor agrees to provide to the State the following temporary worker services.

Various state agencies utilize the services of private companies to provide temporary workers as needed. These individuals provide a variety of clerical, data entry, and word processing services on a temporary basis.

Temporary service contracts are needed to perform services in eight cities around the State. Those cities are: Billings, Butte, Bozeman, Great Falls, Helena, Kalispell, Miles City and Missoula. This contract will provide services to the Helena area.

Temporary workers will be assigned various tasks with the majority of work to be general clerical duties. The specific types of workers for this contract are - limited experience clerical, experienced clerical, and advanced software specialist.

The State of Montana is committed to fair employment opportunities. State job openings and application materials are available on the State's website and at Montana Job Services offices. All interested persons are invited and encouraged to apply for jobs with the State, regardless of their current employment status. Therefore the State will not pay any "finders fees", "transfer charges", "conversion charges", or any other fees

or charges related to the hire of a person who has worked for or is currently working for a temporary services provider.

**5.1 Temporary Service Provider.** The Contractor must be a temporary service offeror as defined in 39-71-116(33) MCA. The temporary worker shall be an employee of the Contractor, not an employee of the State of Montana, (Ref. 39-71-116(35) MCA). However, if the temporary worker has retired from the Montana Public Employees' Retirement System (PERS), the hour and wage limitations applicable to working retirees are applicable to the temporary worker (Ref. 19-3-1106 MCA). The employer of a retiree returning to employment covered by the retirement system shall certify to the board the number of hours worked by the retiree and the gross compensation paid to the retiree in that employment during any pay period after retirement. The certification of hours and compensation may be submitted electronically pursuant to rules adopted by the board. (Ref. 19-3-1106(3) MCA)

Note: "Board" means the public employees' retirement board provided for in [2-15-1009](#).

The Contractor must have a fully functional office open during regular business days, minimum of Monday through Friday, 8 a.m. to 5 p.m., to provide the support necessary for performance of the services required.

**5.2 Skilled Workers.** The Contractor shall provide workers who possess the skills and abilities necessary to successfully complete the duties assigned by the State.

**5.3 Work Schedules.** The temporary worker may be required to work up to eight hours each day. On rare occasions, the worker may be required to work overtime, weekends, or holidays, rates for these times will be negotiated with the Contractor.

**5.4 Length of Assignment.** Temporary workers shall be provided to the requesting agency/department for a maximum of three months or 480 hours, as required. (State agencies should utilize the modified FTE process for temporary employment requiring longer terms.)

**5.5 Payroll and Accounting Responsibilities.** The Contractor shall retain the responsibility for payroll and accounting for all required withholding for the temporary worker(s), including, but not limited to:

- ✓ Federal, state and social security taxes;
- ✓ Federal and state unemployment insurance;
- ✓ Worker's compensation;
- ✓ All monthly, quarterly, and annual government and insurance reports;
- ✓ Calculate, print, and distribute employee's W-2 forms; and
- ✓ Mandatory child support deductions.

**5.6 Invoicing.** Upon submission of verification of hours worked by the temporary worker(s), the Contractor shall invoice the designated agency at regular intervals for payment of contracted services rendered. The Contractor will only be reimbursed for actual hours worked by their employee. Each using agency will be responsible for payment of services rendered, invoices must be sent directly to the agency requesting the worker(s).

**5.7 Unsatisfactory Workers.** The State retains the right to refuse any unsatisfactory worker and the Contractor shall guarantee a satisfactory replacement at no additional charge to the State. The Contractor must provide a replacement worker within one working day of notification.

The State shall have the right to immediately release a temporary worker unable to satisfactorily perform assigned duties or whose behavior is unacceptable, rude, harassing or threatening at any time. The Contractor shall replace that worker for the duration of the work assignment. In the event a worker is removed prior to completion of the scheduled work shift, the Contractor will be reimbursed for actual hours of satisfactory work performance. No charge for removal/replacement will be paid.

**5.8 Rules and Policies.** The Contractor will be informed of the rules and policies of the State agencies and provide workers who are familiar with and can comply with them. The State may require the

Contractor to have a background investigation initiated or completed prior to placement of temporary worker(s). This investigation should include but is not limited to:

- ✓ Fingerprint I.D. Check
- ✓ Active past employer reference check.
- ✓ Past residence history.

Files shall be maintained regarding these investigations. The State may conduct inspections of these background investigations to ensure compliance and appropriateness of hire.

The State expects that the contractors are conducting background checks on their employees' past education, experience, and work history as a normal course of business, and will not pay additional costs for these services. However, the State recognizes that there may be additional costs incurred for fingerprint ID checks or extraordinary background/residence history, and will pay for actual costs incurred for these types of background investigations, when requested.

The Contractor shall inform the worker(s) that the State does not pay for parking expenses.

**5.9 TANF.** The State is actively involved in welfare reform and encourages the contractor to hire participants in the Temporary Assistance for Needy Families (TANF) program.

**5.10 Agency Liaison.** Each agency will designate a liaison(s) to be responsible for the request and authorization of temporary services. The liaison will attempt to provide 24 hours notice prior to requiring services. However, on occasion the State may require immediate placement. If immediate placement is not available, the State reserves the right to procure services from another temporary service contractor.

When requested by the agency liaison the Contractor will provide a list of qualified individuals and documentation of their qualifications (i.e. employment application; testing results; resumes, etc.). The State reserves the right to interview the workers selected by the Contractor before making a selection.

**5.11 Equipment and Supplies.** The individual agencies will supply temporary workers with data entry terminal, office equipment, supplies, and other similar and related items necessary to perform the assigned tasks.

#### **5.12 Position Descriptions:**

**Limited Experience Clerical.** An individual with less than 12 months of experience who can perform copying, filing, receptionist duties, may be required to do minimal typing, and has some office experience.

**Experienced Clerical.** An individual with one to two years of experience, has worked with modern copiers, telephone systems, has some experience with word processing software programs such as Word and WordPerfect, and some experience with spreadsheet software programs such as Excel and Lotus 1-2-3. This individual will perform data entry, some word processing and general clerical/receptionist duties, bookkeeping duties, and has at least one year of office experience. Data entry will include enter and transfer of data from existing databases, medical records, shipment invoices, quarterly reports, demographic reports, etc. It is mandatory that data entry made for confidential files remain confidential.

**Advanced Software Specialist.** An individual possessing the skills listed above with a minimum of two years of computer experience. Extensive knowledge in word processing software programs such as Word and WordPerfect, and spreadsheet software programs such as Excel and Lotus 1-2-3 needed. Some knowledge of PeopleSoft software would be helpful.

**Janitorial Services:** Duties may include but are not limited to sweeping, vacuuming, garbage removal, bathroom cleaning, etc. Services may be needed statewide. Prevailing wage rates for Nonconstruction Services, Cleaner/Janitor, apply to this service category, see 2003 rates referenced below.

**Maintenance Services:** Duties may include but are not limited to grounds upkeep (snowplowing, mowing, trimming, etc.), miscellaneous maintenance work (painting, office moves, and minor maintenance

activities such as changing out lights, fixing cabinets, hauling office supplies, recycling). Services may be needed statewide. Prevailing wage rates for Nonconstruction Services, Groundskeeper, apply to this service category, see 2003 rates referenced below.

Forest Technician: Under general supervision (detailed written guidance and oral instruction) of DNRC field forester, marks trees for harvest or other designations, delineates harvest & SMZ boundaries, measures (cruises) trees for volume estimates, completes field surveys and sampling, develops road maintenance and construction logs, identifies tree species and estimates defect in standing and down trees and performs GPS mapping. Services may be needed in the Missoula and Kalispell areas. Prevailing wage rates for Nonconstruction Services, Forest Worker, apply to this service category, see rates referenced below.

Professional Forester: Performs all the activities of the forest technician, but also is expected to oversee field crews, complete timber sale design, transportation planning, ensure MEPA compliance, prepare timber sale contract and ensure compliance with forestry laws, rules and guidelines. Uses forest road layout knowledge to identify potential road locations. Services may be needed in the Missoula and Kalispell areas. **Note:** Prevailing Wage Rates are not set for personnel performing supervisory or foreman duties. They do have to be paid at least the established (journeyman level) wage rate.

Forester Project Leader/Lead Management Forester: Is required to oversee other foresters (DNRC and other contract personnel) in the context of specific projects and exercise advanced professional judgment. Coordinates and manages ID teams, provides oversight on MEPA documents, timber sale contract preparation and related activities. Services may be needed in the Missoula and Kalispell areas. **Note:** Prevailing Wage Rates are not set for personnel performing supervisory or foreman duties. They do have to be paid at least the established (journeyman level) wage rate.

Biologist: Participates on Project I.D. teams by providing biological analysis of sensitive, threatened and endangered species inhabiting gross project areas. Provides written reports that detail analysis of various project alternatives, assesses and documents the biological impacts associated with each. Requires visiting the project area as well as analysis of published research. Services may be needed in the Missoula and Kalispell areas. Prevailing Wage rates do not apply to this service category

Botanist: Identifies rare and sensitive plant species and their habitat and range of occurrence throughout gross project areas, using professional expertise to predict and locate probable populations. Maps results and provides reports suitable for inclusion in environmental documents. Works under general direction, using a requested geographic area for plant surveys. It is extremely important that work coincides with flowering periods of plants. Services may be needed in the Missoula and Kalispell areas. Prevailing Wage rates do not apply to this service category

Right-of-Way Agent and related: Under the direction of appropriate DNRC personnel, prepares documents for reciprocal access and cost share packages for review and ultimate presentation to Land Board. Provides input and research on road appraisal, relevant geographic information and land ownership. Typically, these are services that are provided by individuals that have a vast knowledge of right-of-way law, agency protocols and have a unique and useful relationship amongst DNRC cooperators and private landowners. Does NOT have the authority to negotiate or do business on behalf of the DNRC. Services may be needed in the Missoula and Kalispell areas. Prevailing Wage rates do not apply to this service category

Resource Specialists: This position would be responsible for assessing the existing environment concerning a specific resource such as wildlife, preparing resource biological evaluations for MEPA documentation and input to the DNRC project leader for designing timber sales and mitigations as needed. This generally requires both field review and office work for preparing professional reports or parts of the MEPA documentation. Services may be needed in the Missoula and Kalispell areas. Prevailing Wage rates do not apply to this service category

**MONTANA PREVAILING WAGE REQUIREMENTS – applies to Janitorial, Maintenance, and Forest Technician services listed above.**

Unless superseded by federal law, Montana law requires that contractors and subcontractors give preference to the employment of Montana residents for any public works contract in excess of \$25,000 for construction or nonconstruction services in accordance with sections 18-2-401 through 18-2-432, MCA, and all administrative rules adopted pursuant thereto. Unless superseded by federal law, each contractor shall ensure that at least 50% of the contractor's workers performing labor on a construction project are bona fide Montana residents. The Commissioner of the Montana Department of Labor and Industry has established the resident requirements in accordance with sections 18-2-403 and 18-2-409, MCA. Any and all questions concerning prevailing wage and Montana resident issues should be directed to the Montana Department of Labor and Industry.

In addition, unless superseded by federal law, all employees working on a public works contract shall be paid prevailing wage rates in accordance with sections 18-2-401 through 18-2-432, MCA, and all administrative rules adopted pursuant thereto. Montana law requires that all public works contracts, as defined in section 18-2-401, MCA, in which the total cost of the contract is in excess of \$25,000, contain a provision stating for each job classification the standard prevailing wage rate, including fringe benefits, travel, per diem, and zone pay that the contractors, subcontractors, and employers shall pay during the public works contract.

Furthermore, section 18-2-406, MCA, requires that all contractors, subcontractors, and employers who are performing work or providing services under a public works contract post in a prominent and accessible site on the project staging area or work area, no later than the first day of work and continuing for the entire duration of the contract, a legible statement of all wages and fringe benefits to be paid to the employees in compliance with section 18-2-423, MCA. Section 18-2-423, MCA, requires that employees receiving an hourly wage must be paid on a weekly basis.

Each contractor, subcontractor, and employer must maintain payroll records in a manner readily capable of being certified for submission under section 18-2-423, MCA, for not less than three years after the contractor's, subcontractor's, or employer's completion of work on the public works contract.

Montana Prevailing Wage Rates as established in the 2007 Final Non-Construction Services book (attached) shall apply to janitorial and maintenance services categories. The rates established in the attached memo from the Department of Labor and Industry shall apply to Forest and Conservation Technicians and Forest and Conservation Workers.

**5.13 IRS Regulation.** This regulation applies to all work assignments that require the temporary worker to have access to federal tax information.

**EXHIBIT 7  
CONTRACT LANGUAGE FOR GENERAL SERVICES**

**I. PERFORMANCE**

In performance of this Contract, the Contractor agrees to comply with and assume responsibility for compliance by his or her employees with the following requirements:

- (1) All work will be done under the supervision of the Contractor or the Contractor's employees.
- (2) Any return or return information made available in any format shall be used only for the purpose of carrying out the provisions of this Contract. Information contained in such material will be treated as confidential and will not be divulged or made known in any manner to any person except as may be necessary in the performance of this Contract. Disclosure to anyone other than an officer or employee of the Contractor will be prohibited.
- (3) All returns and return information will be accounted for upon receipt and properly stored before, during, and after processing. In addition, all related output will be given the same level of protection as required for the source material.

- (4) The Contractor certifies that the data processed during the performance of this Contract will be completely purged from all data storage components of his or her computer facility, and no output will be retained by the Contractor at the time the work is completed. If immediate purging of all data storage components is not possible, the Contractor certifies that any IRS data remaining in any storage component will be safeguarded to prevent unauthorized disclosures.
- (5) Any spoilage or any intermediate hard copy printout that may result during the processing of IRS data will be given to the agency or his or her designee. When this is not possible, the Contractor will be responsible for the destruction of the spoilage or any intermediate hard copy printouts, and will provide the agency or his or her designee with a statement containing the date of destruction, description of material destroyed, and the method used.
- (6) All computer systems processing, storing, or transmitting Federal tax information must meet the requirements defined in IRS Publication 1075. To meet functional and assurance requirements, the security features of the environment must provide for the managerial, operational, and technical controls. All security features must be available and activated to protect against unauthorized use of and access to Federal tax information.
- (7) No work involving Federal tax information furnished under this Contract will be subcontracted without prior written approval of the IRS.
- (8) The Contractor will maintain a list of employees authorized access. Such list will be provided to the agency and, upon request, to the IRS reviewing office.
- (9) The agency will have the right to void the Contract if the Contractor fails to provide the safeguards described above.

## **II. CRIMINAL/CIVIL SANCTIONS:**

- (1) Each officer or employee of any person to whom returns or return information is or may be disclosed will be notified in writing by such person that returns or return information disclosed to such officer or employee can be used only for a purpose and to the extent authorized herein, and that further disclosure of any such returns or return information for a purpose or to an extent unauthorized herein constitutes a felony punishable upon conviction by a fine of as much as \$5,000 or imprisonment for as long as 5 years, or both, together with the costs of prosecution. Such person shall also notify each such officer and employee that any such unauthorized further disclosure of returns or return information may also result in an award of civil damages against the officer or employee in an amount not less than \$1,000 with respect to each instance of unauthorized disclosure. These penalties are prescribed by IRC sections 7213 and 7431 and set forth at 26 CFR 301.6103(n)-1.
- (2) Each officer or employee of any person to whom returns or return information is or may be disclosed shall be notified in writing by such person that any return or return information made available in any format shall be used only for the purpose of carrying out the provisions of this Contract. Information contained in such material shall be treated as confidential and shall not be divulged or made known in any manner to any person except as may be necessary in the performance of the Contract. Inspection by or disclosure to anyone without an official need to know constitutes a criminal misdemeanor punishable upon conviction by a fine of as much as \$1,000 or imprisonment for as long as 1 year, or both, together with the costs of prosecution. Such person shall also notify each such officer and employee that any such unauthorized inspection or disclosure of returns or return information may also result in an award of civil damages against the officer or employee [United States for Federal employees] in an amount equal to the sum of the greater of \$1,000 for each act of unauthorized inspection or disclosure with respect to which such defendant is found liable or the sum of the actual damages sustained by the plaintiff as a result of such unauthorized inspection or disclosure plus in the case of a willful inspection or disclosure which is the result of gross negligence, punitive damages, plus the costs of the action. These penalties are prescribed by IRC section 7213A and 7431.
- (3) Additionally, it is incumbent upon the Contractor to inform its officers and employees of the penalties for improper disclosure imposed by the Privacy Act of 1974, 5 U.S.C. 552a.

Specifically, 5 U.S.C. 552a(i)(1), which is made applicable to contractors by 5 U.S.C. 552a(m)(1), provides that any officer or employee of a contractor, who by virtue of his/her employment or official position, has possession of or access to agency records which contain individually identifiable information, the disclosure of which is prohibited by the Privacy Act or regulations established thereunder, and who knowing that disclosure of the specific material is prohibited, willfully discloses the material in any manner to any person or agency not entitled to receive it, shall be guilty of a misdemeanor and fined not more than \$5,000.

## **II. INSPECTION:**

The IRS and the Agency shall have the right to send its officers and employees into the offices and plants of the Contractor for inspection of the facilities and operations provided for the performance of any work under this Contract. On the basis of such inspection, specific measures may be required in cases where the Contractor is found to be noncompliant with contract safeguards.

## **6. CONSIDERATION/PAYMENT**

**6.1 Payment Schedule.** In consideration for the temporary worker services to be provided, the State shall pay according to the following schedule:

**Helena:**

<b>Position Title</b>	<b>Cost Per Hour</b>
Limited Experience Clerical	\$10.50
Experienced Clerical	\$12.40
Advanced Software Specialist	\$13.75
Janitorial Services *	\$16.45
Maintenance Services *	\$17.00

\* Montana Prevailing Wage Rates as established in the 2007 Final Non-Construction Services Book shall apply to janitorial and maintenance services categories.

**6.2 Withholding of Payment.** The State may withhold payments to the Contractor if the Contractor has not performed in accordance with this contract. Such withholding cannot be greater than the additional costs to the State caused by the lack of performance.

## **7. COST/PRICE ADJUSTMENTS**

Price increases may be permitted at the time of contract renewal through a process of negotiation with the Contractor and the State. Any price increases must be based on demonstrated industry-wide or regional increases in the Contractor's costs. Publications such as the Federal Bureau of Labor Statistics and the Consumer Price Index (CPI) for all Urban Consumers may be used to determine the increased value.

## **8. PURCHASING CARD**

The State of Montana has a Purchasing Card (GE MasterCard) Program in place that gives agencies the ability to charge purchases made from these contracts. The State of Montana prefers this method of payment.

## **9. TERM CONTRACT REPORTING**

Term contract holder(s) shall furnish annual reports of term contract usage. Each report shall contain the name of the worker, position assigned, start and end dates for each assignment, total quantity of hours per assignment, total dollars expended, the State agency/department and the name of the agency contact person. The first report for this term contract will be due July 15, 2005.

Reported volumes and dollar totals may be checked by the State Procurement Bureau against State records for verification. Failure to provide timely or accurate reports is justification for cancellation of the contract and/or justification for removal from consideration for award of contracts by the State.

## **10. ACCESS AND RETENTION OF RECORDS**

**10.1 Access to Records.** The Contractor agrees to provide the State, Legislative Auditor or their authorized agents access to any records necessary to determine contract compliance. (Mont. Code Ann. § 18-1-118.)

**10.2 Retention Period.** The Contractor agrees to create and retain records supporting the temporary worker services for a period of three years after either the completion date of this contract or the conclusion of any claim, litigation or exception relating to this contract taken by the State of Montana or a third party.

## **11. ASSIGNMENT, TRANSFER AND SUBCONTRACTING**

The Contractor shall not assign, transfer or subcontract any portion of this contract without the express written consent of the State. (Mont. Code Ann. § 18-4-141.) The Contractor shall be responsible to the State for the acts and omissions of all subcontractors or agents and of persons directly or indirectly employed by such subcontractors, and for the acts and omissions of persons employed directly by the Contractor. No contractual relationships exist between any subcontractor and the State.

## **12. HOLD HARMLESS/INDEMNIFICATION**

The Contractor agrees to protect, defend, and save the State, its elected and appointed officials, agents, and employees, while acting within the scope of their duties as such, harmless from and against all claims, demands, causes of action of any kind or character, including the cost of defense thereof, arising in favor of the Contractor's employees or third parties on account of bodily or personal injuries, death, or damage to property arising out of services performed or omissions of services or in any way resulting from the acts or omissions of the Contractor and/or its agents, employees, representatives, assigns, subcontractors, except the sole negligence of the State, under this agreement.

## **13. REQUIRED INSURANCE**

**13.1 General Requirements.** The Contractor shall maintain for the duration of the contract, at its cost and expense, insurance against claims for injuries to persons or damages to property, including contractual liability, which may arise from or in connection with the performance of the work by the Contractor, agents, employees, representatives, assigns, or subcontractors. This insurance shall cover such claims as may be caused by any negligent act or omission.

**13.2 Primary Insurance.** The Contractor's insurance coverage shall be primary insurance as respect to the State, its officers, officials, employees, and volunteers and shall apply separately to each project or location. Any insurance or self-insurance maintained by the State, its officers, officials, employees or volunteers shall be excess of the Contractor's insurance and shall not contribute with it.

**13.3 Specific Requirements for Commercial General Liability.** The Contractor shall purchase and maintain occurrence coverage with combined single limits for bodily injury, personal injury, and property damage of \$1,000,000 per occurrence and \$2,000,000 aggregate per year to cover such claims as may be caused by any act, omission, or negligence of the Contractor or its officers, agents, representatives, assigns or subcontractors.

**13.4 Additional Insured Status.** The State, its officers, officials, employees, and volunteers are to be covered and listed as additional insureds; for liability arising out of activities performed by or on behalf of the

Contractor, including the insured's general supervision of the Contractor; products and completed operations; premises owned, leased, occupied, or used.

**13.5 Deductibles and Self-Insured Retentions.** Any deductible or self-insured retention must be declared to and approved by the state agency. At the request of the agency either: (1) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the State, its officers, officials, employees, or volunteers; or (2) at the expense of the Contractor, the Contractor shall procure a bond guaranteeing payment of losses and related investigations, claims administration, and defense expenses.

**13.6 Certificate of Insurance/Endorsements.** A certificate of insurance from an insurer with a Best's rating of no less than A- indicating compliance with the required coverages, has been received by the State Procurement Bureau, PO Box 200135, Helena MT 59620-0135. The Contractor must notify the State immediately, of any material change in insurance coverage, such as changes in limits, coverages, change in status of policy, etc. The State reserves the right to require complete copies of insurance policies at all times.

#### **14. COMPLIANCE WITH WORKERS' COMPENSATION ACT**

Contractors are required to comply with the provisions of the Montana Workers' Compensation Act while performing work for the State of Montana in accordance with sections 39-71-120, 39-71-401, and 39-71-405, MCA. Proof of compliance must be in the form of workers' compensation insurance, an independent contractor's exemption, or documentation of corporate officer status. Neither the contractor nor its employees are employees of the State. This insurance/exemption must be valid for the entire term of the contract. A renewal document must be sent to the State Procurement Bureau, PO Box 200135, Helena MT 59620-0135, upon expiration.

#### **15. COMPLIANCE WITH LAWS**

The Contractor must, in performance of work under this contract, fully comply with all applicable federal, state, or local laws, rules and regulations, including the Montana Human Rights Act, the Civil Rights Act of 1964, the Age Discrimination Act of 1975, the Americans with Disabilities Act of 1990, and Section 504 of the Rehabilitation Act of 1973. Any subletting or subcontracting by the Contractor subjects subcontractors to the same provision. In accordance with section 49-3-207, MCA, the Contractor agrees that the hiring of persons to perform the contract will be made on the basis of merit and qualifications and there will be no discrimination based upon race, color, religion, creed, political ideas, sex, age, marital status, physical or mental disability, or national origin by the persons performing the contract.

#### **16. INTELLECTUAL PROPERTY**

All patent and other legal rights in or to inventions created in whole or in part under this contract must be available to the State for royalty-free and nonexclusive licensing. Both parties shall have a royalty-free, nonexclusive, and irrevocable right to reproduce, publish or otherwise use and authorize others to use, copyrightable property created under this contract.

#### **17. PATENT AND COPYRIGHT PROTECTION**

**17.1 Third Party Claim.** In the event of any claim by any third party against the State that the products furnished under this contract infringe upon or violate any patent or copyright, the State shall promptly notify Contractor. Contractor shall defend such claim, in the State's name or its own name, as appropriate, but at Contractor's expense. Contractor will indemnify the State against all costs, damages and attorney's fees that accrue as a result of such claim. If the State reasonably concludes that its interests are not being properly protected, or if principles of governmental or public law are involved, it may enter any action.

**17.2 Product Subject of Claim.** If any product furnished is likely to or does become the subject of a claim of infringement of a patent or copyright, then Contractor may, at its option, procure for the State the right to continue using the alleged infringing product, or modify the product so that it becomes non-infringing. If none

of the above options can be accomplished, or if the use of such product by the State shall be prevented by injunction, the State will determine if the Contract has been breached.

## **18. CONTRACT TERMINATION**

**18.1 Termination for Cause.** The State may, by written notice to the Contractor, terminate this contract in whole or in part at any time the Contractor fails to perform this contract.

**18.2 Reduction of Funding.** The State, at its sole discretion, may terminate or reduce the scope of this contract if available funding is reduced for any reason. (See Mont. Code Ann. § 18-4-313(3).)

## **19. LIAISON AND SERVICE OF NOTICES**

All project management and coordination on behalf of the State shall be through a single point of contact designated as the State's liaison. Contractor shall designate a liaison that will provide the single point of contact for management and coordination of Contractor's work. All work performed pursuant to this contract shall be coordinated between the State's liaison and the Contractor's liaison.

Penny Moon will be the liaison for the State.  
Room 165 Mitchell Building  
125 North Roberts  
PO Box 200135  
Helena MT 59620-0135  
Telephone #: (406) 444-3313  
Fax #: (406) 444-2529  
E-mail: [pmoon@mt.gov](mailto:pmoon@mt.gov)

James A. Nys will be the liaison for the Contractor.  
910 E Lyndale Ave., Suite A  
Helena MT 59601  
Telephone #: (406) 443-7169  
Fax #: (406) 443-5803  
E-mail: [jnys@westaff.com](mailto:jnys@westaff.com)

The State's liaison and Contractor's liaison may be changed by written notice to the other party. Written notices, requests, or complaints will first be directed to the liaison.

## **20. MEETINGS**

The Contractor is required to meet with the State's personnel, or designated representatives, to resolve technical or contractual problems that may occur during the term of the contract or to discuss the progress made by Contractor and the State in the performance of their respective obligations, at no additional cost to the State. Meetings will occur as problems arise and will be coordinated by the State. The Contractor will be given a minimum of three full working days notice of meeting date, time, and location. Face-to-face meetings are desired. However, at the Contractor's option and expense, a conference call meeting may be substituted. Consistent failure to participate in problem resolution meetings two consecutive missed or rescheduled meetings, or to make a good faith effort to resolve problems, may result in termination of the contract.

## **21. CONTRACTOR PERFORMANCE ASSESSMENTS**

The State may do assessments of the Contractor's performance. This contract may be terminated for one or more poor performance assessments. Contractors will have the opportunity to respond to poor performance assessments. The State will make any final decision to terminate this contract based on the assessment and any related information, the Contractor's response and the severity of any negative performance assessment.

The Contractor will be notified with a justification of contract termination. Performance assessments may be considered in future solicitations.

## **22. TRANSITION ASSISTANCE**

If this contract is not renewed at the end of this term, or is terminated prior to the completion of a project, or if the work on a project is terminated, for any reason, the Contractor must provide for a reasonable period of time after the expiration or termination of this project or contract, all reasonable transition assistance requested by the State, to allow for the expired or terminated portion of the services to continue without interruption or adverse effect, and to facilitate the orderly transfer of such services to the State or its designees. Such transition assistance will be deemed by the parties to be governed by the terms and conditions of this contract, except for those terms or conditions that do not reasonably apply to such transition assistance. The State shall pay the Contractor for any resources utilized in performing such transition assistance at the most current rates provided by the contract. If there are no established contract rates, then the rate shall be mutually agreed upon. If the State terminates a project or this contract for cause, then the State will be entitled to offset the cost of paying the Contractor for the additional resources the Contractor utilized in providing transition assistance with any damages the State may have otherwise accrued as a result of said termination.

## **23. CHOICE OF LAW AND VENUE**

This contract is governed by the laws of Montana. The parties agree that any litigation concerning this bid, proposal or subsequent contract must be brought in the First Judicial District in and for the County of Lewis and Clark, State of Montana and each party shall pay its own costs and attorney fees. (See Mont. Code Ann. § 18-1-401.)

## **24. SCOPE, AMENDMENT AND INTERPRETATION**

**24.1 Contract.** This contract consists of 12 numbered pages, any Attachments as required, RFP # SPB05-1007P, as amended and the Contractor's RFP response as amended. In the case of dispute or ambiguity about the minimum levels of performance by the Contractor the order of precedence of document interpretation is in the same order.

This contract and any subsequent amendments is the sole contractual agreement between the parties and shall supercede all other agreements, either stated or implied, including but not limited to terms and conditions listed on timecards, worker request forms, assignment forms, client agreements, etc., for the entire term of the contract.

**24.2 Entire Agreement.** These documents contain the entire agreement of the parties. Any enlargement, alteration or modification requires a written amendment signed by both parties.

**25. EXECUTION**

The parties through their authorized agents have executed this contract on the dates set out below.

**DEPARTMENT OF ADMINISTRATION  
STATE PROCUREMENT BUREAU  
PO BOX 200135  
HELENA MT 59620-0135**

**WESTAFF OF HELENA, INC.  
210 E LYNDAL AVE., SUITE A  
HELENA MT 59601  
FEDERAL ID # 680095781**

BY: Penny Moon, Contracts Officer

BY: James A. Nys, Franchise Owner

BY: \_\_\_\_\_  
(Signature)

BY: \_\_\_\_\_  
(Signature)

DATE: \_\_\_\_\_

DATE: \_\_\_\_\_

## ATTACHMENT A: STANDARD TERMS AND CONDITIONS

**By submitting a response to this invitation for bid, request for proposal, limited solicitation, or acceptance of a contract, the vendor agrees to acceptance of the following Standard Terms and Conditions and any other provisions that are specific to this solicitation or contract.**

**ACCEPTANCE/REJECTION OF BIDS, PROPOSALS, OR LIMITED SOLICITATION RESPONSES:** The State reserves the right to accept or reject any or all bids, proposals, or limited solicitation responses, wholly or in part, and to make awards in any manner deemed in the best interest of the State. Bids, proposals, and limited solicitation responses will be firm for 30 days, unless stated otherwise in the text of the invitation for bid, request for proposal, or limited solicitation.

**ACCESS AND RETENTION OF RECORDS:** The contractor agrees to provide the department, Legislative Auditor, or their authorized agents, access to any records necessary to determine contract compliance (Mont. Code Ann. § 18-1-118). The contractor agrees to create and retain records supporting the services rendered or supplies delivered for a period of three years after either the completion date of the contract or the conclusion of any claim, litigation, or exception relating to the contract taken by the State of Montana or third party.

**ALTERATION OF SOLICITATION DOCUMENT:** In the event of inconsistencies or contradictions between language contained in the State's solicitation document and a vendor's response, the language contained in the State's original solicitation document will prevail. Intentional manipulation and/or alteration of solicitation document language will result in the vendor's disqualification and possible debarment.

**ASSIGNMENT, TRANSFER AND SUBCONTRACTING:** The contractor shall not assign, transfer or subcontract any portion of the contract without the express written consent of the department. (Mont. Code Ann. § 18-4-141.)

**AUTHORITY:** The following bid, request for proposal, limited solicitation, or contract is issued under authority of Title 18, Montana Code Annotated, and the Administrative Rules of Montana, Title 2, chapter 5.

**COMPLIANCE WITH LAWS:** The contractor must, in performance of work under the contract, fully comply with all applicable federal, state, or local laws, rules and regulations, including the Montana Human Rights Act, the Civil Rights Act of 1964, the Age Discrimination Act of 1975, the Americans with Disabilities Act of 1990, and Section 504 of the Rehabilitation Act of 1973. Any subletting or subcontracting by the contractor subjects subcontractors to the same provision. In accordance with section 49-3-207, MCA, the contractor agrees that the hiring of persons to perform the contract will be made on the basis of merit and qualifications and there will be no discrimination based upon race, color, religion, creed, political ideas, sex, age, marital status, physical or mental disability, or national origin by the persons performing the contract.

**CONFORMANCE WITH CONTRACT:** No alteration of the terms, conditions, delivery, price, quality, quantities, or specifications of the contract shall be granted without prior written consent of the State Procurement Bureau. Supplies delivered which do not conform to the contract terms, conditions, and specifications may be rejected and returned at the contractor's expense.

**DEBARMENT:** The contractor certifies, by submitting this bid or proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction (contract) by any governmental department or agency. If the contractor cannot certify this statement, attach a written explanation for review by the State.

**DISABILITY ACCOMMODATIONS:** The State of Montana does not discriminate on the basis of disability in admission to, access to, or operations of its programs, services, or activities. Individuals, who need aids, alternative document formats, or services for effective communications or other disability-related accommodations in the programs and services offered, are invited to make their needs and preferences known to this office. Interested parties should provide as much advance notice as possible.

**FACSIMILE RESPONSES:** Facsimile responses will be accepted for invitations for bids, small purchases or limited solicitations ONLY if they are completely received by the State Procurement Bureau prior to the time set for receipt. Bids, or portions thereof, received after the due time will not be considered. Facsimile responses to requests for proposals are ONLY accepted on an exception basis with prior approval of the procurement officer.

**FAILURE TO HONOR BID/PROPOSAL:** If a bidder/offeror to whom a contract is awarded refuses to accept the award (PO/contract) or, fails to deliver in accordance with the contract terms and conditions, the department may, in its discretion, suspend the bidder/offeror for a period of time from entering into any contracts with the State of Montana.

**FORCE MAJEURE:** Neither party shall be responsible for failure to fulfill its obligations due to causes beyond its reasonable control, including without limitation, acts or omissions of government or military authority, acts of God, materials shortages, transportation delays, fires, floods, labor disturbances, riots, wars, terrorist acts, or any other causes, directly or indirectly beyond the reasonable control of the non-performing party, so long as such party is using its best efforts to remedy such failure or delays.

**HOLD HARMLESS/INDEMNIFICATION:** The contractor agrees to protect, defend, and save the State, its elected and appointed officials, agents, and employees, while acting within the scope of their duties as such, harmless from and against all claims, demands, causes of action of any kind or character, including the cost of defense thereof, arising in favor of the contractor's employees or third parties on account of bodily or personal injuries, death, or damage to property arising out of services performed or omissions of services or in any way resulting from the acts or omissions of the contractor and/or its agents, employees, representatives, assigns, subcontractors, except the sole negligence of the State, under this agreement.

**LATE BIDS AND PROPOSALS:** Regardless of cause, late bids and proposals will not be accepted and will automatically be disqualified from further consideration. It shall be solely the vendor's risk to assure delivery at the designated office by the designated time. Late bids and proposals will not be opened and may be returned to the vendor at the expense of the vendor or destroyed if requested.

**PAYMENT TERM:** All payment terms will be computed from the date of delivery of supplies or services OR receipt of a properly executed invoice, whichever is later. Unless otherwise noted in the solicitation document, the State is allowed 30 days to pay such invoices. All contractors will be required to provide banking information at the time of contract execution in order to facilitate State electronic funds transfer payments.

**RECIPROCAL PREFERENCE:** The State of Montana applies a reciprocal preference against a vendor submitting a bid from a state or country that grants a residency preference to its resident businesses. A reciprocal preference is only applied to an invitation for bid for supplies or an invitation for bid for nonconstruction services for public works as defined in section 18-2-401(9), MCA, and then only if federal funds are not involved. For a list of states that grant resident preference, see <http://www.discoveringmontana.com/doa/gsd/css/Resources/ReciprocalPreference.asp>.

**REFERENCE TO CONTRACT:** The contract or purchase order number MUST appear on all invoices, packing lists, packages and correspondence pertaining to the contract.

**REGISTRATION WITH THE SECRETARY OF STATE:** Any business intending to transact business in Montana must register with the Secretary of State. Businesses that are incorporated in another state or country, but which are conducting activity in Montana, must determine whether they are transacting business in Montana in accordance with sections 35-1-1026 and 35-8-1001, MCA. Such businesses may want to obtain the guidance of their attorney or accountant to determine whether their activity is considered transacting business.

If businesses determine that they are transacting business in Montana, they must register with the Secretary of State and obtain a certificate of authority to demonstrate that they are in good standing in Montana. To obtain

registration materials, call the Office of the Secretary of State at (406) 444-3665, or visit their website at <http://www.sos.state.mt.us>.

**SEPARABILITY CLAUSE:** A declaration by any court, or any other binding legal source, that any provision of the contract is illegal and void shall not affect the legality and enforceability of any other provision of the contract, unless the provisions are mutually dependent.

**SHIPPING:** Supplies shall be shipped prepaid, F.O.B. Destination, unless the contract specifies otherwise.

**SOLICITATION DOCUMENT EXAMINATION:** Vendors shall promptly notify the State of any ambiguity, inconsistency, or error, which they may discover upon examination of a solicitation document.

**TAX EXEMPTION:** The State of Montana is exempt from Federal Excise Taxes (#81-0302402).

**TECHNOLOGY ACCESS FOR BLIND OR VISUALLY IMPAIRED:** Contractor acknowledges that no state funds may be expended for the purchase of information technology equipment and software for use by employees, program participants, or members of the public unless it provides blind or visually impaired individuals with access, including interactive use of the equipment and services, that is equivalent to that provided to individuals who are not blind or visually impaired. (Mont. Code Ann. § 18-5-603.) Contact the State Procurement Bureau at (406) 444-2575 for more information concerning nonvisual access standards.

**TERMINATION OF CONTRACT:** Unless otherwise stated, the State may, by written notice to the contractor, terminate the contract in whole or in part at any time the contractor fails to perform the contract.

**UNAVAILABILITY OF FUNDING:** The contracting agency, at its sole discretion, may terminate or reduce the scope of the contract if available funding is reduced for any reason. (Mont. Code Ann. § 18-4-313 (3).)

**U.S. FUNDS:** All prices and payments must be in U.S. dollars.

**VENUE:** This solicitation is governed by the laws of Montana. The parties agree that any litigation concerning this bid, request for proposal, limited solicitation, or subsequent contract, must be brought in the First Judicial District in and for the County of Lewis and Clark, State of Montana, and each party shall pay its own costs and attorney fees. (Mont. Code Ann. § 18-1-401.)

**WARRANTIES:** The contractor warrants that items offered will conform to the specifications requested, to be fit and sufficient for the purpose manufactured, of good material and workmanship and free from defect. Items offered must be new and unused and of the latest model or manufacture, unless otherwise specified by the State. They shall be equal in quality and performance to those indicated herein. Descriptions used herein are specified solely for the purpose of indicating standards of quality, performance and/or use desired. Exceptions will be rejected.



Governor Brian Schweitzer

# Montana

## Department of Labor and Industry

Workforce Services Division - Research and Analysis Bureau

May 29, 2008

TO: See Distribution

SUBJECT: Establishment of Interim and Advisory Rates: Forest and Conservation Technicians and Forest and Conservation Workers

In accordance with Administrative Rules of Montana 24.17.124 (2) interim and advisory rates are hereby established for the occupations of 1) Forest and Conservation Technicians and 2) Forest and Conservation Workers. An occupational description and wage rates are as follows:

**Forest and Conservation Technicians:** Compile data pertaining to size, content, condition, and other characteristics of forest tracts, under direction of foresters; train and lead forest workers in forest propagation, fire prevention and suppression. May assist conservation scientists in managing, improving, and protecting rangelands and wildlife habitats, and help provide technical assistance regarding the conservation of soil, water, and related natural resources.

	Wages Level II	Fringes
District 1	13.21	No Rate Established
District 2	13.73	No Rate Established
District 3	13.33	No Rate Established
District 4	13.07	No Rate Established
District 5	13.33	No Rate Established
District 6	13.33	No Rate Established
District 7	12.37	No Rate Established
District 8	12.91	No Rate Established
District 9	12.30	No Rate Established
District 10	12.30	No Rate Established

**Forest and Conservation Workers:** Under supervision, perform manual labor necessary to develop, maintain, or protect forest, forested areas, and woodlands through such activities as raising and transporting tree seedlings; combating insects, pests, and diseases harmful to trees; and building erosion and water control structures and leaching of forest soil.

District 1	9.92	No Rate Established
District 2	9.92	No Rate Established
District 3	9.92	No Rate Established
District 4	9.92	No Rate Established
District 5	9.92	No Rate Established
District 6	9.92	No Rate Established
District 7	9.92	No Rate Established



840 HELENA AVENUE • P.O. BOX 1728 HELENA MT 59624-1728  
PHONE (406) 444-2430 • FAX (406) 444-2638 • TDD (406) 444-0532  
"AN EQUAL OPPORTUNITY EMPLOYER"



District 8	9.92	No Rate Established
District 9	9.92	No Rate Established
District 10	9.92	No Rate Established

These occupations will be included in future surveys of non-construction services occupations. These rates are advisory and represent the minimum wage level that should be considered for public works projects subject to Montana Code Annotated 18-2-401 (9).

H. Eric Johnson  
Supervisor, Prevailing Wage Program  
Research and Analysis Bureau  
Montana Department of Labor and Industry

DISTRIBUTION:  
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